Employer Strategies and Future Options Towards Enterprise Based Employee Representation in Australia

Paul J.Gollan* and Jonathan Hamberger**

Introduction

It is apparent from existing research in Australia that little is known about enterprise based employee representation (EBER) structures. In addition, little has been documented about the impact of such structures on either the managerial objective of securing consent to organisational change or the employee objective of influencing managerial decisions. This paper will attempt to address these issues by examining EBER structures in Australia.

Australia's traditionally highly regulated industrial relations system, based on compulsory conciliation and arbitration, with pay and conditions determined largely at national, industry or occupational level has done little to foster EBER[1]. However, a reduction in the importance of industry and occupational awards, strong growth in the incidence of enterprise bargaining, and a dramatic decline in union density has prompted a growing interest in EBER.

Both Labour and Coalition governments have introduced legislation to allow for a much greater focus on enterprise-level industrial relations. There has, however, been surprisingly little research on the impact of these changes in non-union workplaces – including their effect on internal communications and consultation structures. It is argued that with around 26 per cent of workers belonging to unions (even less in the private sector), a 'representation gap' has emerged, placing greater focus on the effectiveness of management initiatives in filling the void. In addition, the shift towards greater determination of pay and conditions at the enterprise level has made the need for effective voice mechanisms for employees at that level more important than ever. At the same time, however the capacity of trade unions to provide such mechanisms in most enterprises is probably at its lowest level for over a hundred years.

The paper draws upon current evidence and presents an argument that there is a need for employers to acknowledge and recognise the opportunities presented by the introduction of EBER. It does by addressing five research questions: Are EBER arrangements needed in Australia? What is the current state of play regarding EBER? Can EBER arrangements be

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[1] However, there are in some States formal requirements concerning the establishment of health and safety committees.
*Paul Gollan is a Lecturer in the Department of Industrial Relations at the London School of Economics.
**Jonathan Hamberger is the federal Employment Advocate.

accommodated under the current legislative framework? What is their likelihood for success? What are the opportunities and the threats for employers in introducing EBER in Australia?

In addressing these questions, the article is divided into six sections. The article first examines the background and the growth of EBER structures in Australia, highlighting recent developments and general trends. The next section reviews employer strategies and objectives for implementing EBER and the rationale for introducing such arrangements. Following this is a review of recent evidence from Australia and overseas on organisational outcomes and effectiveness of EBER. A discussion of the future opportunities and threats for employers is then explored. Finally, final conclusions are drawn from the evidence presented offering a synthesis of the major findings.

Background

Australia's industrial relations system throughout this century has been strongly influenced by the centralised systems of conciliation and arbitration. Respective federal and state Acts of Parliament provide for the establishment of conciliation and arbitration tribunals, the registration and legal recognition of employer and employee associations (unions[2]), and detail the rights and obligations of the parties. The tribunals are empowered to handle industrial disputes and to set wages and conditions of employment embodied in awards (Bamber & Lansbury 1998).

Historically, employer and employee associations together with the industrial tribunals have dominated the wage setting and dispute-resolution processes. However, trade union density has now declined to around 26 per cent of the labour force. Workplace relations in non-unionised establishments have also been dominated by the centralised system, as individuals performing the category of work specified in an award are covered by the provisions contained in them, irrespective of whether they are members of trade unions. This has created few opportunities for the legal development of EBER.

As Markey and Reglar (1997) state, employee participation or industrial democracy has been slow to gain acceptance in Australian industry. Furthermore, they argue that 'Australian managers have traditionally been wary of any whittling away at their managerial prerogative. Unions were also traditionally suspicious of employee participation schemes as a management plot. For its part, the national level of government had lacked the will or the constitutional authority to implement a widespread system of industry democracy' (Markey & Reglar 1997: 358).

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[2] In Australia the legal regulation of trade unions is essential to arbitration and conciliation and confers corporate status protection against discrimination, and security and protection against competing unions covering the same industry or occupation (Gardner and Palmer, 1992:144). The AIRC needs to be satisfied that 'the association is free from control by or improper influence from, an employer, or an association or organisation of employers' (Workplace Relations Act 1996 s189 (aa)).

Legally, Australia has not had national or state legislation to support the development of works councils or any other form of EBER structures along the lines which have been established in many European countries (Gardner & Palmer 1997: 344). One of the relatively few examples of institutionalised employee participation in management decision-making processes in Australia has been the establishment of safety and health committees in organisations with a certain number of employees, determined by State occupational health and safety statutes[3].

In some Australian states, such as New South Wales, some experimentation with EBER structures has occurred. In the 1991 Industrial Relations Act (NSW) provisions allowing 'works committees' were introduced to facilitate state-based enterprise bargaining. Under s119 of the 1991 Act, enterprise agreements could be made between the employer and a works committee to represent persons employed in the enterprise. The Act stated that before a works committee could become a party to an enterprise agreement, the proposed agreement must have been approved in a secret ballot by not less than 65 per cent of employees in the enterprise. The role of works committees was to represent persons employed at the establishment in negotiating, making, varying and terminating of enterprise agreements[4]

Nationally, new consultation requirements were introduced in 1993 as part of the Industrial Relations Reform Act (the Reform Act). In particular, the provisions relating to non-union agreements or 'EFAs' stated that for an agreement to be approved it was necessary that during the negotiations 'reasonable steps' had been taken to 'consult' and 'inform' employees about the agreement and its terms. In addition, these terms needed to be 'explained' and employees 'advised' for gaining approval of the agreement (Mitchell, Naughton & Sorensen 1997: 203). However, these provisions did not prescribe the means (structure or processes) through which such consultation was to occur (Mitchell, Naughton & Sorensen 1997: 203). The provisions stated that as a precondition to approval, the agreement should establish a process for the parties 'to consult each other about matters involving changes to the organisation or performance of work in any place of work to which the agreement relates' unless 'the parties have agreed that it is not appropriate for the agreement to provide' such a process.

In 1997, a new phase of industrial relations reform began with the introduction of the Workplace Relations Act 1996, which repealed and replaced the previous federal industrial relations legislation. The new legislation enabled employers to enter into both collective and individual agreements directly with their employees. However, the Act is even less prescriptive about consultation requirements. The requirements in the new legislation for certified agreements are limited to ensuring employee 'access' to the agreements (up to fourteen days prior to approval), and that the employer took reasonable steps to explain the agreement to employees (PartVIB s170LR (2)(a)(b)).

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[3] See, e.g., Occupational Health and Safety Act 2000 (NSW) ss 17-19; and Occupational Health and Safety Act 1985 (Vic) 37.

[4] The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of employees in a single enterprise.

State of play

In 1986, the Australian federal government's Green Paper *Industrial Democracy and Employee Participation* found 'little evidence of the widespread application of employee participation and only a few examples of genuine worker influence on major decision-making' in Australian workplaces both in unionised and non-union environments (1986: 65). However, in spite of the lack of legislative support, Marchington's analysis of the Australian Workplace Industrial Relations Survey (AWIRS)[5] data revealed a growth in the number of formal joint consultative mechanisms in the latter part of the 1980s, and that generally these were perceived to be quite successful (Marchington 1992: 530)[6].

The release of the latest AWIRS95 data indicates a further rise in the development of EBER arrangements. The 1995 incidence of JCCs was more than double that of 1990, representing an increase from 14 to 33 per cent. The increase in task forces or *ad hoc* committees was also substantial, up from 25 to 38 per cent (Morehead et al. 1997: 188). Morehead et al. (1997) state that much of this increase may have come about because of legislative requirements relating to enterprise bargaining or making organisational change initiatives as smooth as possible. However, while a large proportion of Australian workplaces reported the existence of various types of employee involvement schemes, there were relatively few cases where involvement took the form of representative participation with a genuine opportunity to influence decision-making at work (Mitchell, Naughton & Sorensen 1997).

From this survey evidence two observations can be made regarding EBER. First, the data indicates that the most common impetus for the introduction of EBER arrangements was management at the workplace. Second, as suggested in the previous AWIRS data and UK evidence, EBER arrangements are more likely to occur at unionised workplaces (48 per cent), particularly those with an active union presence, compared to workplaces with no union (13 per cent) (Morehead et al. 1997; Gollan 1999). The Campling and Gollan (1999) study suggested that employees have taken on increased responsibility at work, but that this has not resulted in a greater willingness by employers to trust or give employees more participation and involvement in organisational decision-making processes. In addition, negotiations in non-unionised environments appear to make less use of formalised consultative mechanisms and more use of informal methods of communicating employee concerns to management.

Employer strategies and objectives

The rationale for a representative agency function – union or non-union - in the workplace can be classified into a number of productivity and equity functions. These include:

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[5] A national survey in 1990 covering more than 2,000 workplaces and 19,000 employees.

[6] The precise structure and level of EBER arrangements can vary considerably. They may take the form of works councils, company or staff councils, consultative councils/committees (CCs) or joint consultative committees (JCCs). In reality the variations in terminology do not appear to equate in any systematic way to differences of form or function. Importantly such structures represent all employees at the establishment or workplace. Some structures may have management representation and involve union representatives.

improved communication and information sharing; effective dispute resolution; greater employee commitment and morale; enhanced employee bargaining power; fair and just decision-making; and improved social cohesion.

The question remains whether EBER may approximate 'voice' as identified by traditional union structures. Interestingly, as Freeman and Medoff noted, the efficacy of voice depends on the way in which labour and management interact, rather than whether unions exist or not (Sako 1998; Freeman & Medoff 1984). Organisations may create EBER bodies to ensure that bargaining is based on the needs and perspectives of those within the enterprise – rather than being driven by agendas from outside the organisation. This may be due to the perception that such externally driven agendas will fail to take account of the particular circumstances of the enterprise and are more likely to adopt an adversarial approach to the bargaining process. Some advocates also suggest firms voluntarily introduce EBER structures to reflect the culture and norms of a particular workplace. This approach is based on the assumption that in establishing and maintaining effective working employee and employer relationships, employees' rights need to be recognised and respected, thereby encouraging an alignment of interests and promoting mutual respect and responsibility (Walton 1985). While others have argued that structures and arrangements representing the interests of employees at the workplace (legally enforced or not) may give more legitimacy and efficacy to the decision-making process (Hyman 1997), ensuring greater organisational commitment.

This debate has centred on EBER representation as communication devices or mechanisms for employee involvement, whether they are a 'complement' to management decision-making or as some commentators have suggested, a 'substitute' for unions through the collective bargaining process (See Table 1). One notion of a 'substitute' is that it serves in place of a union, which presupposes a win-lose employment relationship from an employer's view.[7] It assumes employers create an alternative form of employee representation which employees will prefer to 'union' forms.

Alternatively, an entirely different notion is that EBER arrangements make traditional union structures unnecessary, in the sense that they transform the employment relationship, with other high commitment practices, into a win-win relationship. This notion is based on the premise that employees do not desire or need a protective agency through traditional bargaining *per se* (since this emphasises the adversarial, distributive element of the employment relationship) because their basic interests are satisfied. In this approach, the purpose of EBER is to encourage and foster an alignment of interests between employer and employees. This perspective is encapsulated by human resource management (HRM) theorists advocating high commitment work practices and emphasising mutual gains in the enterprise (Kochan, Katz, & McKersie 1986; Walton 1985).

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[7] However, unions often claim that both sides can be better off in such a relationship through increased voice benefits and through the union 'shock' effect of higher wages. In this situation firms focus on productivity rather than costs. In addition, advocates of the social partnership model would strongly disagree that union presence presupposes a 'win-lose' relationship. Such a perception is based on an assumption about union behaviour.

Table 1 Strategies and objectives of enterprise-based employee representation

Strategy	Complement	Substitute	
Process	Co-determination/ Consultation	Representation of employee interests	Co-operation
Power Base	Legally imposed or management initiative	Legally imposed or management initiative	Management initiative
Channel of representation	Dual	Single	Dual
Representative interest	Mutual (win-win)	Conflictual (win-lose)	Mutual (win-win)
Rights	Information, consultation, co-decision making, limited veto powers	Information, consultation, limited workplace decision-making	Production line information, suggestions, problem identification and productivity improvement

(Adopted from Gollan, 1999)

Effectiveness and organisational outcomes

Since management generally initiates EBER structures, is it worth the effort and resources? The assumption is that allowing workers a 'voice' provides a mechanism for the early detection of problems and for their participation in decisions that could have a potentially positive impact on productivity and quality.

Fernie and Metcalf's (1995) analysis in the UK of the 1990 Workplace Industrial Relations Survey (WIRS3) suggests that where JCCs exist voluntarily, 'there is not a single unfavourable association between the presence of a JCC and workplace performance' (Fernie & Metcalf 1995: 397-398). Moreover, they argue there are weak favourable associations between the existence of a JCC and both increased productivity and a positive employee relations climate. They state that the consultation process implied by the existence of the JCC makes it easier to change working practices and introduce new technology, leading to faster productivity growth both in unionised and non-union workplaces (Fernie & Metcalf 1995: 397).

Fernie and Metcalf (1995) also highlight findings from Denny and Nickell's (1991) research which show that investment rates are higher in both union and non-union workplaces with a JCC. Denny and Nickell conclude that the provision of information and consultation appears to lead to more harmonious relations between employees and management than is the case where there is no JCC (Fernie & Metcalf 1995: 397). In addition, recent research into the European car components industry has suggested there is positive business performance for those companies adopting more participative employee practices (including representative participation). This has included improvements in quality, communication and the quality of decision-making (Sako 1998).

A study by Addison, Siebert, Wagner and Wei (2000) examined the relationship between unionisation and the impact of consultative committees in the UK. Their findings suggested that consultative committees in unionised workplaces were associated with slightly lower productivity, whereas in non-union workplaces they were associated with higher productivity. Research by Fenton-O'Creevy, Wood and Callerot (1998) suggested that lower productivity levels in unionised workplaces were based on a tendency for committees in union workplaces to consult on minor or 'inappropriate' issues. It could also be that unions in such workplaces wish to remain the predominant source of representation over substantive issues and view such committees as talking forums only.

Research into high performance work systems also suggests that the adoption of a cluster of 'best practice' HR practices, which includes some level of indirect employee participation, can increase the market value of organisations by around 15 per cent (Fenton-O'Creevy, Wood & Callerot 1998: 9). Analysis by Guest and Peccei (1998) of partnership and performance in the UK indicates that high levels of direct and representative participation, especially representative participation in policy decisions, have a high impact on employee commitment to the organisation and the positive state of the psychological contract between employees and employers. In other words, there was a consistent finding that high levels of employee influence have a positive impact on employee attitudes and behaviour (Guest & Peccei 1998: 36-38). Guest and Peccei conclude, while 'the level of representative influence over policy was generally very low ...; but where they do, either because of the underlying trust implied in the process, the pay-offs in terms of positive employee attitudes and behaviour are considerable' (Guest & Peccei 1998: 38).

In Australia, the Australian Workplace Industrial Relations Survey (AWIRS 95) data also suggests that EBER through JCCs has a high impact on workplace performance and communications between management and employees, and encouraging change at the workplace (Morehead et al. 1997: 511). In particular, managers in workplaces with 20 or more employees reported that consultative committees had led to an improvement in workplace performance in 66 per cent of cases, the ease with which change could be introduced in 72 per cent of cases, product or service quality in 59 per cent of cases, and communications between management and employees in 82 per cent of cases. Consultative committees were more likely to have been reported as leading to improved workplace performance and product or service quality in non unionised workplaces (though the effect was still positive in unionised workplaces). However, there was little difference in the reported outcomes between union and non-union workplaces in relation to better employee-management communications and the ease of introducing change. The size of the organisation perhaps surprisingly, does not appear to be all that relevant to the benefits of EBER. Both the AWIRS (Morehead et al. 1997) and the OEA data (Gollan 2000) suggest that relatively small organisations (less than 20 employees) can benefit at least as much as larger organisations from the establishment of EBER structures.

Campling and Gollan's (1999) study of non-union and lightly unionised workplaces suggests there was greater satisfaction with management and greater employee commitment if greater participation and involvement of employees was sought. However, the research

noted that the lack of a readily defined collective structure in non- and lightly unionised workplaces placed a greater focus on management's ability to implement change processes. This could involve a considerable investment of management time and resources to create and develop an organisational culture that provides a foundation for positive organisational change.

For example, in the Campling and Gollan (1999) study, the Executive Chairman of a consultancy group wanted to avoid the bureaucratic and indirect communication structures that he had been accustomed to as a senior manager in a large Australian commercial bank. Management communication and special activities had a distinctly individual focus rather than a collective group orientation. However, the more individualised consultation process led to morale problems among both office and professional staff. According to one manager, the morale problems resulted from the lack of promotional opportunities and the absence of a team building culture required in a project-based industry as a result of a highly individualised and often discretionary approach to employee relations in the company. This direct management-employee communication style resulted in outcomes which were frequently concealed from other employees (eg salary levels, level of bonus payments, training), rather than open collective dialogue with staff where differences could have been acknowledged and discussed and solutions found. As a result, there was growing employee and management support for more formalised policies, greater openness and human resources practices based on equitable and more collective processes, especially in relation to remuneration decisions.

In addition, evidence in Australia from the Office of the Employment Advocate (OEA) regarding consultative processes leading to individual agreements or Australian Workplace Agreements (AWAs) also indicate productive outcomes from more collective forms of employee involvement. A recent OEA report which examined 688 organisations with approved AWAs stated:

> Contrary to management perceptions over the effectiveness of the various methods of communicating information about AWAs, initial results would suggest that more collective participation mechanisms may yield greater organisational outcomes, when examining the actual outcomes from employers who stated that these had 'improved' or 'greatly improved' are examined ... employers who made use of JCCs or works committees were significantly more likely to have had an improvement in labour productivity. (Gollan 2000: 23)

More specifically, the report also suggested that improvement in management and employee relations outcomes was associated with the use of JCCs (or works committees) and elected non-union representatives. The ability to implement change was also thought to be influenced by JCCs (or works committees), and lower employee turnover could also be an outcome of the use of JCCs, works committees, and task forces (Gollan, 2000:23). The report concluded that '... while regular formal meetings between managers and employees, and individual employee discussions are the most frequently used channels of communication .... when supplemented with other forms of communication they were even more likely to achieve greater improvement in a range of organisation outcomes' (Gollan 2000:25).

Discussion

The evidence to date suggests that EBER can be very effective in developing greater overall workplace consultation and involvement of employees. In particular, it would appear that in organisations where greater employee participation has been introduced (especially indirect representative participation), this has been good for business in terms of improved performance and productivity. In addition, while the influence of EBER structures over policy and strategic issues is limited, where they do have influence over such issues, greater organisational outcomes have resulted with higher employee commitment and more positive employee attitudes and behaviour towards the organisation. The fact remains, however, that these new co-operative tendencies do not eliminate the adversarial element in organisations but channel it instead. The pattern of tensions can be shifted due to changing expectations of employees and the interpretation of these expectations by their representatives.

While EBER arrangements appear to be more common in unionised workplaces, there is at least some evidence that the gains from EBER are even greater in non-unionised workplaces. Thus, organisations that currently do not have such arrangements in place should give serious consideration to their establishment. Such arrangements should not necessarily be seen as a substitute for unions – after all, they appear to contribute to achieving corporate goals even where unions are active. Also, where unions have a low presence and consequently do not operate as an effective voice mechanism for the workforce, EBER arrangements can help to fill the representation gap. As the evidence presented above makes clear, this is beneficial not only from an equity perspective – but also from the need to improve corporate performance.

The empirical research does not appear to throw much light on what form of EBER structure is best – indeed, there is no reason to believe that there is a single model that would suit all organisations. However, if EBER structures are to be successful as effective voice mechanisms there are certain points to bear in mind.

Effectiveness

Some studies have indicated that unless considerable resources are made available with a high level of procedural fairness, the longevity of EBER structures is called into question. In addition, the terms of reference need to be comprehensive. If it is only concerned with McGraw and Palmer's (1994) 'three T's' – tea, towels and toilets while these issues may be important to some employees, an EBER structure is unlikely to make a substantial impact and perceptions of tokenism may actually worsen management-employee relations. The evidence suggests that traditional adversarial industrial relations re-emerge if raised worker expectations are not met, resulting in low morale and dissatisfaction. It could also be argued that it would generally be appropriate for EBER structures to deal with pay and conditions issues, as well as other workplace matters. The OEA survey (Gollan 2000) suggests that even in workplaces where pay and conditions are governed by individual contracts, using joint consultative committees as part of their development process is likely to be beneficial.

The preceding review also highlights that the mere establishment of an EBER structure is not sufficient to achieve greater effectiveness and positive performance outcomes. Rather, it is the nature of the relationship, management style and culture, the trust developed in EBER structures, and the degree to which influence over managerial decisions is ceded through such forums, which are the most important factors to success (Fenton-O'Creevy, Wood & Callerot 1998: 27). Importantly, this demonstrates that only by establishing mechanisms that enable employees to have legitimate voice and that allow differences to emerge will managers be able to channel such differences into more productive outcomes. Employees must be confident that they can raise uncomfortable issues without fear of recrimination. For employers, the clear message from the research is that high quality communication and consultation between management and employees at the workplace is essential for achieving performance and employee commitment.

Legislative options

As noted above, there has been relatively little legislation in Australia concerning EBER, partly because of the centralised nature of the industrial relations system. While there has been a major shift in the direction of negotiating pay and conditions at an enterprise level, the accompanying development of EBER has been fairly ad hoc and unregulated.

There is growing interest in the idea of mandating the establishment of European style works councils either as a way of bolstering the position of unions at the workplace level or alternatively as a way of filling the representation gap left by declining union membership. If EBER is good for business – as the evidence clearly suggests – is there any reason for employers to oppose legislation requiring the establishment of works councils or similar mechanisms? There is a risk however that mandating EBER will involve imposing a 'one size fits all' approach that does not take into account different workplace cultures and requirements. This could result in tokenism and increase organisational transaction costs – while contributing nothing to genuine improvements in workplace communications and performance.

In the present legal and political environment, future legislation mandating EBER arrangements such as works committees would attract little support in Australia. However, there is a range of possible legislative options that may be used to promote and encourage the introduction of such structures. For example, current legislative requirements under State OH&S legislation for the establishment of committees could be amended to provide the basis for more general employee consultation requirements, rather than specific single purpose OH&S committees and employee representatives dealing with a narrow range of OH&S issues. In fact, increasing the scope and agenda of these committees could provide a more effective means of achieving their initial aims by allowing them to debate a range of issues, which are currently excluded from such discussions. In particular, issues concerning hours of work, control over work, the desirability of particular reward and remuneration mechanisms, the level and quality of general training and skill requirements, and knowledge and competence required for the effective performance of particular jobs could become part of their mandate. This wider scope may also provide a great means for

management to involve and inform an employee of their responsibilities and the level of accountability within a particular role.

In addition to these provisions, current federal legislation under the Workplace Relations Act 1996 could provide further legal opportunities. In particular, the provisions of the Act dealing with the requirement to consult trade unions about redundancy (s170GA etc) could be altered to include works committees. In addition, s170LK of the Act could be amended to allow certified agreements to be made with works committees and some of the procedural steps that currently apply could be modified or eliminated where a works committee (or similar such structure) is a party to the agreement.

The AWA provisions of the Act could likewise be modified to streamline some of the provisions currently applying or required under the *Act*. In particular, this may be appropriate when an AWA (or series of AWAs) has been developed in consultation, or has the approval of a works committee. Modifications could include proposals currently under discussion for AWAs, such as changes to the cooling off period arrangements. The freedom of association provisions of the *Act* could also be amended to provide formal legal protection for employee representatives from any form of victimisation or discrimination.

However, given the apparent lack of political will at the moment, any legislative changes would, in the first instance, need to be voluntary. As such, EBER could be one of a number of legislative options open to employers. However, employers who agree to establish and use them could, as a *quid pro quo,* be subject to less regulation. Obviously, any mechanism replacing existing requirements and obligations safeguarding employees' rights, would need to satisfy some basic criteria in respect to protecting employees' interests. For example, safeguards would need to be put in place over the election process of representatives, the degree of independence, the level of responsibilities, their access to resources outside of the organisation, and finally, their ability to have a real influence in the decision making process.

Conclusion

In conclusion, there is a substantial body of evidence pointing to significant benefits of EBER at the workplace. But these are also likely to have a significant 'spill over' impact on the public good, both economically and socially. Government, employers, unions and employees could well rediscover that there is an important and enduring role for EBER. It could be argued that increased support for such institutions is recognition that value creation is an essentially social process and that organisational sustainability depends on legitimate social governance. The time has come from a broader debate about what could and should be done to promote EBER in Australia.

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